funds above $100 million are operating. There are many other examples we can cite.

The bill before us has one category. That is hedge funds. We have to recognize there are other major private pools of capital, venture capital funds and private equity funds that should also have to register. The other thing we have to recognize is that the regulatory capacity of any agency is limited. What we have seen over the last several years is a situation where regulators may have had the authority, but they did not have the resources, or they saw situations where certain activity was regulated and other activity was not.

What this amendment argues for is to ensure that we recognize both the potential dangers of large pools of private capital and the limitations of regulations to really differentiate between the pools. That is why the amendment I propose provides no categorical exemptions for these private pools. The rationale is that I do not think, frankly, the regulators can keep up with private funds that can describe their business plan in a way to qualify for an exemption but very well might be conducting the same type of behavior that causes concerns. So I have suggested, and it has been supported by a wide number of individuals and institutions, that we provide this broad-based registration requirement—firms above $100 million would be required to have Federal registration. That is something, I think, that is important. Therefore, we have proposed the amendment.

The investors in these firms deserve, I think, our protection as well. The benefits to the financial system outweigh, in my view, the modest associated costs, and as a result I think we could and should move forward. Many of these firms, frankly, if you have $100 million under management or for investment, and if you don't have good financial controls, I think we have to ask ourselves: Should these firms be operating? Should they be allowed to continue to operate?

The second aspect of this, too, is that the infrastructure of compliance—the infrastructure of risk management—is built into these firms. If it is not, frankly, we should ask: Why are they still doing business? The cost of registration—and this is simply registration; simply telling the Federal regulators, the SEC, that we are doing business like this; we have a certain amount of assets under management or investments that we are managing, and several other items of basic information—has been estimated to be rather modest compared to the money under management and the other operational expenses of these firms.

So again, I think this is a valuable amendment. It is a valuable amendment that reinforces the basic tenets of this legislation—transparency, accountability, and giving our regulators an overall view of the financial situation—the money that is there, the types of business activities that are there—so that they can develop appropriate information for their regulatory endeavors.

The other point I would make is that if we were to stop the camera today and look at the financial scene, we might make judgments that, well, this entity is not very large, this particular entity doesn't do the type of business, et cetera. With the dynamism of our economy, which is a value, going forward 2 or 3 years, those firms could change dramatically, and something that seemed innocuous today could be systematically risky in the future. It might be called the same thing, but its functions are different.

I make a final point in this regard. In some respects, legislation that was considered here in the 1990s looked at derivatives, looked at securitization as a phenomenon that would be static and that wouldn't change. But we know it changed, and it changed in a way the regulators didn't anticipate and weren't prepared to anticipate. So mortgage funds in the 1990s were based on those old-fashioned 20 percent down, a FICO score of 680, income sufficient to amortize the mortgage over the lifetime. The mortgages they were securitizing in 2005–2006—no money down, no income statement, liar loans, et cetera—was a different product. And yet we legislated for products and for business entities that transformed dramatically in the subsequent years.

We have to provide our regulators with the flexibility to not only deal with the problems of today but to fairly anticipate a dynamic and changing financial situation. That is at the heart of this legislation also. So I hope we have an opportunity to further debate this and to offer it and to ask colleagues for their consideration.

With that, I yield the floor to the Senator from Michigan.

The PRESIDING OFFICER (Mr. MERKLEY). The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, I want to briefly come to the floor to talk about what happened here today. We saw the long arm of Wall Street come to the Senate and reach right into this Chamber. It should not have happened. We all should have learned the lesson as to what Wall Street plunged us into. And the idea that Wall Street could do this, through a number of Republican Senators who objected to our even coming to a vote on the so-called Merkley-Levin amendment, is nothing less than shameful. But that is what happened.

We have been going back and forth, a Democrat and a Republican amendment, and it came time for Senator DODD, who is a cosponsor of Merkley-Levin, to offer this amendment, to bring this up to the floor, and it was rejected. It was rejected by the Republican leadership acting through the manager of the bill.

This amendment has been worked for many days. We have attempted very hard, and succeeded in addressing a number of concerns which were raised, but what we insisted upon and will continue to insist upon and will not yield on is our determination that banks not engage in risky bets. Our commercial banks have access to the Fed window. That is taxpayer money. Our commercial banks have access to the Federal Deposit Insurance Corporation. It guarantees that the accounts will be paid. We cannot permit—we cannot allow—banks to engage in risky bets and then expect to be bailed out by taxpayers. That happened to us. It got us into big trouble. We are in a deep recession as a result of what the Wall Street banks did.

There were a lot of other contributors. They were not alone. Our subcommittee hearings were prepared over many months. In fact, the investigation lasted about a year and a half, with millions of documents that were subpoenaed and brought into the subcommittee's offices. What our hearings showed is that upstream we had a number of banks and mortgage companies that were willing to package bad loans, in many cases loans that they knew were fraudulent, and in some very serious cases loans that they knew were likely to go into default. Nonetheless—and the e-mails show this—those upstream banks decided they were going to bundle these mortgages—these dubious risky mortgages, many of which were likely to default—they were going to securitize these mortgages and ship them downstream, where Wall Street was panting for these bundled securitized mortgages because then they were going to slice them and dice them and cut them up into these collateralized deals, which were so complicated and very difficult to explain to the public.

Nonetheless, what happened is the public took a bath, and a number of firms on Wall Street did very well, including Goldman Sachs. It did extremely well through their dealings. Some of the e-mails from Goldman Sachs show how well they did, while everybody else was losing their homes, losing their jobs, and most banks were losing money. In one of their e-mails Goldman Sachs said:

> Much of the plan began working by February as the market dropped by 25 points and our very profitable year was underway.

So the market dropped 25 points and the profitable year at Goldman Sachs was underway. Why? Because they bet against their own clients.

As Senator MERKLEY pointed out—and he has been a real pleasure to work with as a partner—we had a situation here where Goldman Sachs was selling billions of dollars of securities—many of which they knew contained bad assets, and their own e-mails show it—selling to their clients with their right hand and with their left hand betting heavily against those same securities. The way they bet against them is a complicated story—going short, betting short, the big short, using those